

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3332 of 1999

with

SPECIAL CIVIL APPLICATION No 8683 to 8807 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

AKBARMIIYA AMIRMIYA

Versus

STATE OF GUJARAT

Appearance:

MR BS PATEL for Petitioners
MR AD OZA, GP with Mr AJ DESAI, AGP for the
respondents.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 05/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

The main point in focus, in this group of petitions, is as to whether the petitioners are entitled to the benefit of the provisions of section 28-A of the Land Acquisition Act, 1894 (the Act for short) pertaining to redetermination of the amount of compensation on the basis of the award of the Court.

Since all the petitioners have claimed the benefit of the provisions of section 28-A of the Act, and common questions are involved in this group of petitions, therefore, upon request, they are being disposed of by this common judgment.

The petitioners had requested the respondent authority for redetermination of the amount of compensation obtained by them on the basis of the consent award declared on 24.2.88 under section 11(2) of the Act, on the strength of the subsequent award of the Court under section 18(1) declared on 13.2.89. The respondent authority declined the request of the petitioners, inter alia, on the ground that they are not entitled to the benefit of the provisions of section 28-A of the Act and, also, on the ground that in view of condition No.4 of the agreement between the parties, the petitioners after making agreement and resultant award based on that, under section 11(2), not entitled to make reference under section 18 of the Act.

The following admitted facts may be highlighted.

- (1) The petitioners are agriculturists and they had agricultural lands in sim of village Nagalpur, Dist: Mehsana.
- (2) Notification under section 4(1) of the Act had been published in the official gazette on 13.9.84 followed by notification under section 6(1) on 16.2.86 for the acquisition of the land of the petitioners.
- (3) There was an agreement and resultant consent award under section 11(2) between the parties.
- (4) The amount of compensation had been paid to the petitioners at the rate of Rs.12.84 ps. per sq. mtr. by the order dated 24.2.88 pursuant to the consent award.

- (5) Some of the claimants who have not entered into consent award desired to make reference under section 18 of the Act, as a result of which, the reference had been made.
- (6) The reference Court (District Court, Mehsana) passed award under section 18 in Reference Cases No.295 and 296 of 1989 which was modified by this Court, which prompted the petitioners to approach the respondent No.2 by filing application under section 28-A of the Act.
- (7) The respondent No.2 rejected the applications of the petitioners on the ground that they are not entitled to redetermination of compensation as there was consent award under section 11(2) and condition No.4 of the agreement.

That is how, the petitioners have, now come up before this Court challenging its legality and validity by filing this group of petitions under Article 226 of the Constitution of India.

We have heard the learned advocates appearing for the parties. We have, also, examined the factual profile and the legal landscape relevant to the issue in focus.

Section 28-A of the Act is introduced with a specific design and desideratum to provide for redetermination of amount of compensation and for that purpose to empower the Court to re-determine the amount of compensation on the basis of award of the Court. It reads as under:

"28-A. Re-determination of the amount of compensation on the basis of the award of the Court -- (1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under Sec.11, the persons interested in all the other land covered by the same notification under Sec.4, sub-section (1) and who are also aggrieved by the award of the Collector, may, notwithstanding that they had not made an application to the Collector under Sec.18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court;

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter, be referred by the Collector for the determination of the Court and the provisions of Secs. 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under Sec.18."

It is quite obvious and explicit from the plain perusal of section 28-A that it applies only to those claimants who had failed to seek reference under section 18 of the Act and redetermination has to be done by the Collector on the basis of compensation awarded by the Court in a reference under section 18 of the Act and application in that behalf has to be made to the Collector within three months from the date of award of the Court.

There is no dispute about the fact that consent award was passed by the Collector concerned, upon the agreement reached between the parties, on 24.2.88, and they had not obviously, desired for reference under section 18 of the Act. The award passed in favour of the petitioners on the basis of agreement is, admittedly, not upon adjudication by the competent authority under section 11(1) as well as under section 18 of the Act. It is, specifically, averred in the affidavit in reply that after making an agreement under section 11(2), award came to be passed and therefore, the claimants, petitioners herein, would not be entitled to make an application for reference to the Court under section 18 of the Act.

Section 18 of the Act provides for reference to the Court and procedure thereon. It would be expedient here to refer to the said provisions which read as under:

"18. Reference to Court -- (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made --

(a) if the person making it was present or represented before the Collector at the time when he made this award, within six weeks from the date of the Collector's award;

(b) in other cases within six weeks of the receipt of the notice from the Collector under Sec.12, sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire."

The opening words of section 18 clearly go to show that the claimant who has not accepted the award is entitled to require the authority to make a reference for the determination of his petition as to measurement of the land, the amount of compensation, apportionment of it or the payability to the persons interested in the land acquired.

Section 11 provides for inquiry into the measurement, value and claims and award by the Collector. Sub-section (2) provides for making of an award according to the terms of an agreement between the parties. In other words, section 11(1) provides for an award or offer to be made to the owner of the land whose land has been acquired by the Government. Whereas, section 11(2) provides for an award based on consent.

It would be, also, interesting to refer to the provisions of section 31 of the Act. Second proviso to section 31 will be relevant to be referred to. Section 31 makes provision for payment of compensation or deposit of the same to be made in the court by the competent authority. Second proviso makes it very clear that payment of compensation on deposit of the sum in the court by the

authority after making an award under section 11 is subject to the provision that no person who has received the part of the amount otherwise than under protest shall be entitled to make an application under section 18. This lends reinforcement to the view that a person who is a consenting party in an award under section 11(2) is not entitled to seek reference under section 18. If he has received the amount of compensation otherwise than under protest, also, shall not be entitled to make any reference under section 18. A person who is not entitled to seek any reference under section 18, obviously, would not be entitled to the benefit of section 28-A. It is very clear from the provisions of section 28-A that it provides benefit to a person and it shall apply only to those claimants who had failed to seek reference under section 18 of the Act. But a person who is not entitled to seek reference under section 18, obviously, would not be entitled to the benefit under section 28-A of the Act. Again, as per condition No.4 of the agreement between the consenting parties, like that the present petitioners, after making an agreement and resultant award under section 11(2) of the Act, they would not be entitled to seek a reference.

It would be interesting to refer here the amendment introduced by Gujarat Act No.20 of 1965. Section 11(2) to (4) came to be introduced, for the first time, whereby, the concept of consent award empowering the Collector to act on the agreement between the parties came to be provided. Obviously, the object of introducing such a provision in sub-section (2) of section 11 has been to encourage negotiations and conciliations between the parties interested in the land and the acquiring body as regards value of land under acquisition and, also, to avoid delay in acquisition proceedings and unnecessary and unwarranted litigation. The Parliament, also, passed Land Acquisition (Amendment) Act, 1984, on similar lines amending section 11 of the principal Act.

If both the parties to the agreement agree to the amount of compensation, the Collector having jurisdiction after satisfying himself as to the genuineness and voluntary nature of the agreement and further that such an agreement can be taken into consideration for passing an award under sub-section (2) of section 11 can pass award under section 11(2). It is, therefore, obvious and evident that sub-section (2) of section 11 is empowering and enabling the concerned authorities having jurisdiction to act on duly and genuinely executed agreement between the parties and to pass consent award.

The very concept and philosophy of consent award envisioned and ingrained in section 11(2) of the Act is to make expeditious payment of compensation and to acquire immediately the possession of the required land so as to avoid delay and achieve the object of notification under section 4(1) of the Act. The plea and the premise on which this group of petitions on hand is founded upon is counter to the spirit and provisions of section 11(2) of the Act. Section 28-A of the Act is designed to enable a person who has received the amount of compensation under section 11(1) of the Act to apply to the competent authority for redetermination of the amount of compensation in the event of any award of the Court under section 18, wherein, the amount of compensation is on a higher side or is enhanced and the claimant who has not availed the benefit of seeking reference under section 18 is entitled to the benefit of section 28-A of the Act.

The view which we are inclined to take in this group of petitions, after close scrutiny and analysis of sub-section (2) of section 11 of the Act is, also, reinforced by the decision of the Apex Court in Abdul Aziz Abdul Razak v. Municipal Corpn. of Greater Bombay, AIR 1996 SC 1350, in which the benefit of statutory enhanced rate of interest was refused to the claimants on the ground that there was a contract and the award was under section 11(2) as amended by the Act 68 of 1984. It was, clearly, held that the benefit of enhanced rate of interest as per the Amendment Act cannot be allowed in view of the agreement between the parties. It was, further, held that the Land Acquisition Officer was entitled to award interest as per the contract between the parties.

It will be, also, interesting to refer to a decision of the Division Bench of this Court in Dinesh Soni & Others v. O.N.G.C. (1994) 2) G.L.H. 131, wherein, this Court has, unequivocally, held that where there is an award made based on agreement between the parties, the claimant is not entitled to seek reference and the concerned Collector is not empowered to make a reference under section 18 of the Act in view of the provisions of section 11(2). This Court in a Division Bench decision in Ismail Ibrahim Pandoor v. Officer on Special Duty, Land Acquisition Unit, 40(3) G.L.R. 2688, has, also, held that when an agreement has been reached between the owner of the land and the Land Acquisition Officer and the amount of compensation is fixed accordingly, it would be determination of the market price under section 11(2) and not under section 11(1) of the Act and, therefore,

there would not lie an application seeking reference under section 18(1) of the Act. The view which we are taking is further reinforced by the following decisions:

- (1) Ishwarlal Premchand Shah v. State of Gujarat,
AIR 1996 SC 1616
- (2) State of Gujarat v. Daya Shamji Bhai, AIR 1996
SC 133
- (3) Babua Ram v. State of U.P. (1995) 2 SCC 689.

There is no other contention much less the contention that the agreement on which the award under section 11(2) is based on is void or inexecutable. In our opinion, therefore, the contention of the respondent authorities that the claimants are not entitled to the benefit of the provisions of section 28-A of the Act as they are the beneficiaries of the award under section 1(2) is quite justified and the plea on the basis of which this group of petitions are founded upon is unsustainable requiring us to dismiss the petitions leaving the parties to bear their own costs. Accordingly, these petitions are dismissed with no order as to costs. Rule discharged. No costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)